

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO WOOTEN,

Plaintiff,

No. CIV S-04-0816 DFL JFM P

vs.

CALIFORNIA DEPARTMENT
OF CORRECTIONS,

Defendant.

FINDINGS & RECOMMENDATIONS

On April 11, 2005, defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b). Local Rule 78-230(m) requires that opposition to motions filed in prisoner cases be filed within twenty-one days and further provides: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion" By order filed July 26, 2004, plaintiff was advised of the requirements of Local Rule 78-230(m). On May 16, 2005, plaintiff was ordered to file an opposition within thirty days. The thirty day period has now elapsed and plaintiff has not filed an opposition to the motion or otherwise responded to the court's order. For these reasons, plaintiff's failure to oppose should be deemed a waiver of opposition to the granting of the motion.

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Defendants' April 11, 2005 motion to dismiss be granted; and
2. This action be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: July 21, 2005.


UNITED STATES MAGISTRATE JUDGE

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